

United States Senate

WASHINGTON, DC 20510

December 7, 2018

912

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai,

We write to express our opposition to the Federal Communications Commission's (FCC) proposed Declaratory Ruling classifying text messaging as an information service. We urge you to right this wrong and classify text messaging as a telecommunications service, affording this vital means of communications protections that promote innovation and support freedom of speech.

In the 21st century, text messaging is as essential as telephone service, facilitating trillions of messages between senders and receivers each year – from businesses and customers, from organizations and supporters, from parents and teachers, and from doctors and patients. These messages support commerce, public safety, and political activity, as well as everyday American life. Reasonable access to this vital means of communication should be preserved.

Should text messaging be classified as an information service, telephone carriers would be free to block any text message they wish. By leveraging their gatekeeper role, carriers could force businesses, advocacy organizations, first responders, doctors, and any others to pay for more expensive short code system or enterprise text messaging to reach their audience, rather than by traditional text messages. Carriers could also censor legal text messages if they believe that the content is controversial.

Regrettably, telephone carriers have already leveraged their gatekeeper function to discriminate against lawful content. In 2007, Verizon Wireless blocked mass text messages from Naral Pro-Choice America, an advocacy group supporting women's reproductive rights. Verizon argued that they had the right to censor this content, deeming the messages to be 'controversial and unsavory.'¹ In recent years, several petitioners have submitted filings to the FCC detailing a series of incidents in which carriers are blocking lawful text messages from consenting consumers – messages reminding patients of their appointments, dispatch notifications to service technicians, and two-factor authentication messages that enable consumers to more securely access a website or account.²

Notably, classifying text messages as an information service will not curb the rise in abusive and unwanted robotexts. Text messages are deemed calls under the Telephone Consumer Protection


¹ Liptak, Adam. "Verizon Blocks Messages of Abortion Rights Group." *The New York Times*, 27 Sept. 2018, www.nytimes.com/2007/09/27/us/27verizon.html.

² See multiple filings in WT Docket No. 08-7 (November, 2015), <https://ecfsapi.fcc.gov/file/60001339667.pdf>, <https://ecfsapi.fcc.gov/file/60001338394.pdf>, <https://ecfsapi.fcc.gov/file/60001337506.pdf>.

Act (TCPA), which requires any sender of robotexts to obtain permission from the receiver prior to robotexting their mobile device. In recent years, the FCC confirmed that telephone carriers can stop unwanted robotexts or spam without classifying texts as an information service.

Text messaging is an essential telecommunications service that should receive all of the pro-consumer, pro-competition protections afforded under Title II of the Communications Act. That means no blocking or discrimination of lawful content. We thank you for your attention to this important matter.

Sincerely,


Edward J. Markey
United States Senator


Ron Wyden
United States Senator



Kirsten Gillibrand
United States Senator


Tammy Baldwin
United States Senator


Richard Blumenthal
United States Senator


Tina Smith
United States Senator


Benjamin L. Cardin
United States Senator


Elizabeth Warren
United States Senator


Bernard Sanders
United States Senator


Dianne Feinstein
United States Senator



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

January 2, 2019

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Markey:

I write in response to your letter regarding the Commission's December 12, 2018 Declaratory Ruling that classified text messaging as an information service under Title I of the Communications Act. The Commission's decision makes clear that wireless providers are authorized to continue their efforts to stop unwanted text messaging through robotext-blocking, anti-spoofing measures, and other anti-spam features, as it relates to Short Message Service (SMS) and Multimedia Messaging Service (MMS).

Text messaging has become a critical communications option for American consumers, with 1.77 trillion messages exchanged in 2017. Wireless messaging has become a trusted form of communication for millions of Americans in large part because wireless providers have taken measures to prevent spam and other unwanted or malicious traffic from clogging consumers' phones.

The Commission's decision to deem SMS and MMS information services is correct as a legal matter, as outlined in the Declaratory Ruling's painstaking analysis of the relevant statutory terms and the nature of text messaging. It's also sound policy. The FCC shouldn't make it easier for spammers and scammers to bombard consumers with unwanted texts. And we shouldn't allow unwanted messages to plague wireless messaging services in the same way that unwanted robocalls flood voice services. But that's precisely what would have happened if we would have classified text messaging services as telecommunications services and subjected them to common-carrier regulation under Title II, as mass-texting companies and others petitioned us to do.

Our Title I approach garnered support from a spectacularly broad range of stakeholders. For example, a bipartisan group of 20 state attorneys general, from Connecticut to Idaho, told the FCC: "We believe, and our citizens desire, that this unique wireless service should be kept 'spam free.' We therefore urge the Commission to maintain the status quo, rather than imposing new regulatory structures that would open the spam floodgates."¹

Similarly, the National Organization of Black Elected Legislative Women told us that "removing the current regulatory framework would open up our constituents to a torrent of

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unwanted text messages, exposing them to harmful spam and fraud in the process.”² And the National Organization of Black County Officials, which told us that “[w]e agree with the Federal Communications Commission’s proposed order to ensure messaging remains a protected environment for NOBCO’s constituents. This would allow wireless companies to continue their service by filtering out fraudulent or unwanted text messages that their customers do not want.”³ And the respected public safety organization, NENA: The 9-1-1 Association, cited the “impact [that] such a decision could have on access to crucial emergency communications services, such as Text-to-9-1-1” and warned that if “either consumers or, worse yet, [Public Safety Answering Points], are inundated with unwanted messages, either cohort could withdraw from widespread use of the SMS platform.”⁴ And the National Association of Neighborhoods, which told us that Title II classification “would expose our membership to unwanted spam, and unsafe or fraudulent messaging. . . . The Commission has the opportunity to better protect citizens without implementing unnecessary regulation of wireless carriers by allowing wireless carriers to filter messages. This is the best approach for the communications needs and safety of our neighborhoods.”⁵ And the National Black Caucus of State Legislators requested “that the Commission keep consumers’ mobile text messaging experiences free from unwarranted solicitations and deny the petition to subject mobile messages to Title II oversight.”⁶ And finally—in what may be the most amazing statement of all—one of the petitioners *itself* suggested changes to the Commission’s description of its services but made clear that these changes “do not affect the analysis or conclusion reflected in the draft order.”⁷

These are the reasons why the Commission refused to let spam texts infest American consumers’ phones. Instead, we decided to make clear that SMS and MMS are information services and enable wireless providers to continue taking steps to limit spam and ensure that text messaging remains a trusted form of communications for millions of Americans. In short, we stand with American consumers, not those trying to bombard them with spam or scam robotexts.

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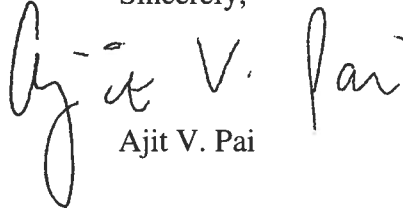
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Page 3—The Honorable Edward J. Markey

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

January 2, 2019

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

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These are the reasons why the Commission refused to let spam texts infest American consumers’ phones. Instead, we decided to make clear that SMS and MMS are information services and enable wireless providers to continue taking steps to limit spam and ensure that text messaging remains a trusted form of communications for millions of Americans. In short, we stand with American consumers, not those trying to bombard them with spam or scam robotexts.

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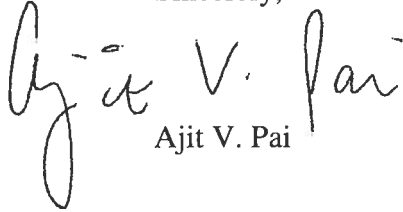
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 2, 2019

The Honorable Kirsten Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, D.C. 20510

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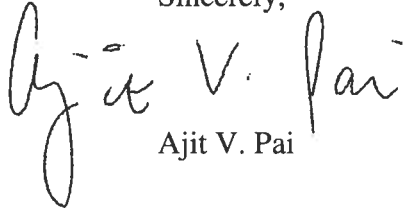
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Page 3—The Honorable Kirsten Gillibrand

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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

January 2, 2019

The Honorable Tammy Baldwin
United States Senate
709 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Baldwin:

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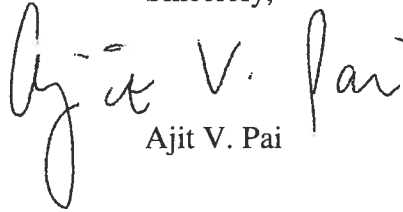
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Text messaging has become a critical communications option for American consumers, with 1.77 trillion messages exchanged in 2017. Wireless messaging has become a trusted form of communication for millions of Americans in large part because wireless providers have taken measures to prevent spam and other unwanted or malicious traffic from clogging consumers' phones.

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These are the reasons why the Commission refused to let spam texts infest American consumers’ phones. Instead, we decided to make clear that SMS and MMS are information services and enable wireless providers to continue taking steps to limit spam and ensure that text messaging remains a trusted form of communications for millions of Americans. In short, we stand with American consumers, not those trying to bombard them with spam or scam robotexts.

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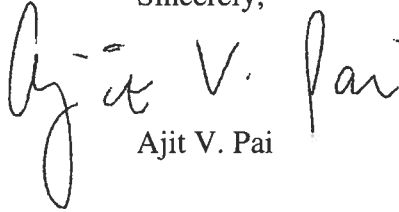
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I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 2, 2019

The Honorable Tina Smith
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Smith:

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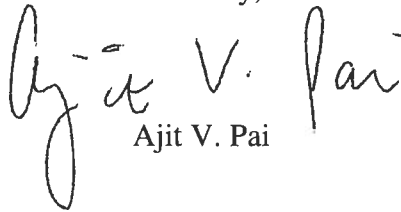
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

January 2, 2019

The Honorable Benjamin L. Cardin
United States Senate
509 Hart Senate Office Building
Washington, D.C. 20510

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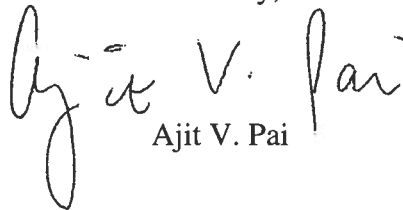
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 2, 2019

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, D.C. 20510

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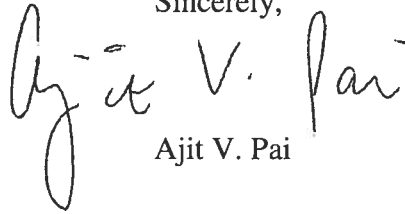
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 2, 2019

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building
Washington, D.C. 20510

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These are the reasons why the Commission refused to let spam texts infest American consumers’ phones. Instead, we decided to make clear that SMS and MMS are information services and enable wireless providers to continue taking steps to limit spam and ensure that text messaging remains a trusted form of communications for millions of Americans. In short, we stand with American consumers, not those trying to bombard them with spam or scam robotexts.

⁶⁵ Letter from Rep. Karen Camper (TN), National President, NOBEL Women, to Ajit Pai, Chairman, FCC, WT Docket No. 08-7 (filed Dec. 5, 2018), <https://www.fcc.gov/ecfs/filing/1205217340127>.

⁶⁶ Letter from Dr. Helen Holton, Executive Director, National Organization of Black County Officials, Inc., to Ajit Pai, Chairman, FCC, WT Docket No. 08-7 (filed Dec. 3, 2018), [https://ecfsapi.fcc.gov/file/120386224263/NOBCO%20FCC%20Robo-Text%20appeal%20\(12.03.18\).pdf](https://ecfsapi.fcc.gov/file/120386224263/NOBCO%20FCC%20Robo-Text%20appeal%20(12.03.18).pdf).

⁶⁷ Letter from Trey Forgety III, Director of Government Affairs, NENA: The 9-1-1 Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 08-7 (filed Dec. 21, 2015), <https://ecfsapi.fcc.gov/file/60001389375.pdf>.

⁶⁸ Letter from Ricardo Byrd, Executive Director, National Association of Neighborhoods, to Tom Wheeler, Chairman, FCC, WT Docket No. 08-7 (filed Dec. 21, 2015), <https://ecfsapi.fcc.gov/file/60001389354.pdf>.

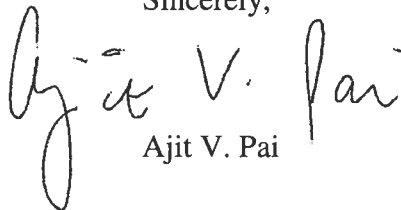
⁶⁹ Letter from Senator Catherine E. Pugh, President, National Black Caucus of State Legislators, to Tom Wheeler, Chairman, FCC, WT Docket No. 08-7 (filed Nov. 30, 2015), <https://ecfsapi.fcc.gov/file/60001387871.pdf>.

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Page 3—The Honorable Bernard Sanders

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part, followed by "V." and "Pai".

Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 2, 2019

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

I write in response to your letter regarding the Commission's December 12, 2018 Declaratory Ruling that classified text messaging as an information service under Title I of the Communications Act. The Commission's decision makes clear that wireless providers are authorized to continue their efforts to stop unwanted text messaging through robocall-blocking, anti-spoofing measures, and other anti-spam features, as it relates to Short Message Service (SMS) and Multimedia Messaging Service (MMS).

Text messaging has become a critical communications option for American consumers, with 1.77 trillion messages exchanged in 2017. Wireless messaging has become a trusted form of communication for millions of Americans in large part because wireless providers have taken measures to prevent spam and other unwanted or malicious traffic from clogging consumers' phones.

The Commission's decision to deem SMS and MMS information services is correct as a legal matter, as outlined in the Declaratory Ruling's painstaking analysis of the relevant statutory terms and the nature of text messaging. It's also sound policy. The FCC shouldn't make it easier for spammers and scammers to bombard consumers with unwanted texts. And we shouldn't allow unwanted messages to plague wireless messaging services in the same way that unwanted robocalls flood voice services. But that's precisely what would have happened if we would have classified text messaging services as telecommunications services and subjected them to common-carrier regulation under Title II, as mass-texting companies and others petitioned us to do.

Our Title I approach garnered support from a spectacularly broad range of stakeholders. For example, a bipartisan group of 20 state attorneys general, from Connecticut to Idaho, told the FCC: "We believe, and our citizens desire, that this unique wireless service should be kept 'spam free.' We therefore urge the Commission to maintain the status quo, rather than imposing new regulatory structures that would open the spam floodgates."⁵⁷

Similarly, the National Organization of Black Elected Legislative Women told us that "removing the current regulatory framework would open up our constituents to a torrent of

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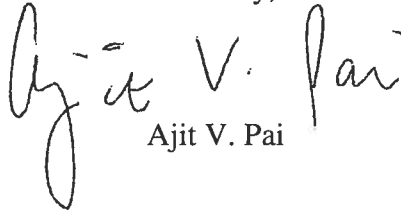
⁶² Letter from Senator Catherine E. Pugh, President, National Black Caucus of State Legislators, to Tom Wheeler, Chairman, FCC, WT Docket No. 08-7 (filed Nov. 30, 2015), <https://ecfsapi.fcc.gov/file/60001387871.pdf>.

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Page 3—The Honorable Dianne Feinstein

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Sincerely,

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Ajit V. Pai